



June 26, 2001

Mr. James E. Belton
Law Office of James E. Belton
3505 Boca Chica Boulevard, Suite 434
Brownsville, Texas 78521

OR2001-2735

Dear Mr. Belton:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 148796.

Cameron Workforce, Inc. ("CWI"), which you represent, received a request for CWI's fiscal year budget; its most recent audit of operations with the accompanying management letter; and a tape recording of a meeting involving the Texas Workforce Commission ("TWC"). You state that the budget, audit, and management letter have been released to the requestor. You claim that the requested tape recording is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You explain that the requested tape is a recording of an oral exit conference held in connection with TWC's annual monitoring review of CWI. You assert that the annual monitoring review is an audit, for purposes of section 552.116, and that the tape recording constitutes an audit working paper under section 552.116(b)(2). We are not persuaded by your arguments. You state that the tape recording was made by CWI and that the original tape is in CWI's possession. You do not represent to this office that the recording was made at TWC's request or for TWC's use, nor do you inform us that TWC has a copy or transcript of the tape. Thus, you have not demonstrated that the tape recording represents information prepared or maintained by the state auditor or the auditor of a state agency or institution of higher education in conducting an audit or preparing an audit report. *See* Gov't Code § 552.116(b)(2). We therefore conclude that the tape recording may not be withheld from disclosure as an audit working paper under section 552.116(a) and must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

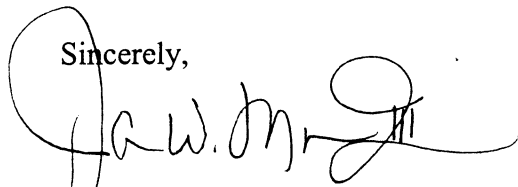
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large circular flourish on the left side.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 148796

Enc. Submitted audiotape

c: Emma Perez-Trevino
c/o Law Office of James E. Belton
3505 Boca Chica Boulevard, Suite 434
Brownsville, Texas 78521
(w/o enclosures)